

LEON E. PANETTA
16TH DISTRICT, CALIFORNIA

COMMITTEES
AGRICULTURE

CHAIRMAN
SUBCOMMITTEE ON DOMESTIC
MARKETING, CONSUMER RELATIONS,
AND NUTRITION

HOUSE ADMINISTRATION

CHAIRMAN
SUBCOMMITTEE ON PERSONNEL AND POLICE
SELECT COMMITTEE ON HUNGER

CHAIRMAN
TASK FORCE ON DOMESTIC HUNGER

DEPUTY MAJORITY WHIP

Congress of the United States
House of Representatives
Washington, DC 20515

December 8, 1987

CIA ACCOUNTABILITY ACT - H.R. 3603 **CCA FILE**

WASHINGTON OFFICE
339 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-2861

DISTRICT OFFICES:
380 ALVARADO STREET
MONTEREY, CA 93940
(408) 849-3555

HOLLISTER, CA
(408) 637-0500

SALINAS, CA
(408) 424-2229

SAN LUIS OBISPO, CA
(805) 541-0143

SANTA CRUZ, CA

Dear Colleague:

As you may know, I recently introduced the CIA Accountability Act, H.R. 3603, in the House with thirty-three original cosponsors. Senator John Glenn has introduced a similar proposal in the Senate. Knowing of your interest in the intelligence oversight function of Congress, I would be pleased to have you join me as a cosponsor of this measure.

The recent report of the Iran-contra Committees has recommended that Congressional oversight of the CIA should be strengthened by the acquisition of an audit staff. In addition, the report pointed out that the CIA Inspector General did not have the necessary manpower and resources to acquire key facts during the entire affair.

I believe my legislation provides solutions to both of these points by giving the GAO authority to initiate and perform audits of the CIA while safeguarding classified information from unauthorized disclosure. Presently, the CIA is the only federal government agency which has consistently refused to allow the GAO to examine its activities arguing that it is accountable only to Congressional intelligence committees. This bill carefully limits the manner by which the GAO would obtain access to CIA personnel and records, and will limit dissemination of the audit results to the Senate and House Intelligence Committees as well as the Director of the CIA.

The CIA maintains its own internal watchdog, the Inspector General's Office, to ensure that the agency remains true to its mission and accounts properly for its funds. The Iran-Contra mess is proof that we cannot be content with internal reviews alone. Self-audit is justifiably subject to suspicion and distrust. GAO duty is to make independent audits of federal agency operations and programs. This legislation is intended to strengthen the GAO's ability to discharge its functions as an investigative and auditing arm of the Congress.

GAO's unique ability to conduct such audits was recognized by the House Select Committee To Investigate Covert Arms Transactions With Iran when it borrowed GAO auditors to identify the money trail. Had similar legislation been in place when the Select Committee began its investigation then auditors would have been in place, cleared and intimately familiar with the CIA's accounting systems and administrative procedures.

This legislation has the support of GAO Comptroller General Charles O. Bowsher. Mr. Bowsher recently revealed at a Senate hearing that the National Security Agency and numerous military services have allowed GAO auditors with top-secret clearances to review many of their activities. With every other federal agency and department already subject to audits of the GAO, the CIA remains alone in its belief that GAO is not legally authorized to audit their agency. In introducing this legislation, I believe that carefully controlled GAO audits of the CIA will in no way compromise the CIA mission.

Enclosed is the text of my introductory statement and legislation. If you need additional information or would like to join as a cosponsor, please let me know or call Gary Namm of my staff at 5-2861.

Sincerely,


LEON E. PANETTA
Member of Congress



Congressional Record

PROCEEDINGS AND DEBATES OF THE 100th CONGRESS, FIRST SESSION

Vol. 133

WASHINGTON, TUESDAY, NOVEMBER 3, 1987

No. 175

House of Representatives

INTRODUCTION OF THE CIA ACCOUNTABILITY ACT OF 1987

(Mr. PANETTA asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. PANETTA. Mr. Speaker, I rise today along with the support of 33 original cosponsors to introduce legislation that will allow the U.S. General Accounting Office [GAO] to audit the books and records of the Central Intelligence Agency [CIA]. The CIA Accountability Act of 1987 is identical to the measure introduced in the Senate by Senator JOHN GLENN on July 1, 1987. This legislation will authorize the U.S. General Accounting Office to audit the records and activities of the Central Intelligence Agency.

The CIA is the only Federal agency whose files are not open to examination by the GAO. This is due in part to legal restrictions and in part to the refusal by CIA to open its books.

This legislation strikes a reasonable balance between the need for secrecy and the need for accountability in the operations and financial activities of the CIA. It opens every CIA program and activity to possible audit or evaluation. At the same time, our bill carefully limits the GAO personnel who could be involved in CIA audits, the methods by which the GAO could obtain access to CIA personnel and records, and the dissemination of the audit results.

The Iran-Contra scandal and new revelations of CIA activities make it clear that the CIA has sometimes acted as if it is not subject to this Nation's laws. But in a democracy, no agency or individual is above the law. The very foundation of our Constitution is a system of checks and balances. For example, a more active audit of the National Security Council expenditures may have revealed the extraordinary activities of Oliver North and saved this Nation some of the embarrassment that was exposed at the Iran-Contra hearings.

Currently, the only method used to ensure CIA accountability is the use of internal reviews by the CIA's inspector general. The Iran-Contra scandal offers more than adequate evidence of the inadequacy of this system. Frankly, it's easy to conclude that we have here a classic case of the fox guarding the chickens.

Right now, there is no adequate way for Congress and the American taxpayer to ensure that the CIA is carrying out its activities legally or effectively. The GAO performs this auditing and evaluating function for Congress throughout the executive branch of the Government. It is a highly competent and strictly nonpartisan agency. It is the logical organization to carry out this work.

The intelligence agencies have operated beyond congressional control for too many years. I applaud the great work of the House Permanent Select Committee on Intelligence over the years in reviewing the limited materials provided to them from the CIA. But the problem is not the review of the records provided to the Intelligence Committee by the CIA but rather the problem lies in the records

that are not provided to the committee and the Congress by the CIA.

Last December, GAO Comptroller General Charles Bowsher told Congress that the GAO could not adequately account for nearly \$17 million of the \$27 million in humanitarian assistance appropriated last year for the Contras which was administered by the State Department. The GAO found that millions of dollars wound up in offshore bank accounts in the Bahamas and the Cayman Islands. Such poor accountability to the American taxpayer in this and many other programs can no longer be tolerated. To date, the American people and the Congress have no information on the accounting of the \$100 million Contra aid program currently being administered by the CIA.

The National Security Agency and numerous military services regularly permit GAO auditors with top-secret clearances to review many of their highly classified national security activities including black box programs such as highly secret weapons projects and sensitive intelligence operations. Also, the Intelligence Committees borrowed GAO personnel to establish the money trail in the early review of the Iran-Contra mess. The legislation will allow the GAO, which is a strictly nonpartisan agency, to apply to the CIA the same strict standards of financial accountability and performance that it applies to other agencies.

This bill is carefully drafted to ensure secret activities and classified documents are not compromised. It would allow the President to shield specific employees from investigation, but no written records could be kept from GAO review. It is an approach that insists on accountability while recognizing the unique role of the CIA.

By current law and with the specific language of this measure, GAO's review power is carefully limited in at least six major ways to prevent damage to CIA operations:

First. All GAO personnel must obtain appropriate security clearances from the CIA before they are granted access to CIA info.

Second. CIA records are to be kept in controlled locations by the CIA.

Third. All GAO documents created as a result of an audit will receive same security classification as original document.

Fourth. GAO personnel will be subject to criminal prosecution for breaches of security.

Fifth. Congressional requests for GAO audit must come from the chairman or ranking member of the Select Committee on Intelligence in Senate or House.

Sixth. President can exempt any individual CIA officer or employee from GAO access.

Even in an open society certain intelligence matters must be protected but so too must the intelligence community begin to honor its commitment to an open society by making available its records and certain basic information necessary for Congress to carry out its intelligence oversight function.

Today, we must not allow our own investigative arm, the GAO, to be so constructed and hampered when the

need for effective CIA oversight is so evident. Our legislation clears the path for full access authority for the GAO to be given the teeth necessary to conduct meaningful investigations on our behalf. If Congress intends to take its oversight responsibilities seriously, then we must act to expand our access to intelligence information. The first step is to guarantee GAO such access on behalf of the Congress and the American taxpayer.

I urge my colleagues in the House to support this legislation, and I submit an analysis of the bill followed by the bill in its entirety be printed in the RECORD.

ANALYSIS OF THE CIA ACCOUNTABILITY ACT OF 1987 SECTION-BY-SECTION ANALYSIS

SECTION 1

Title and general description of the bill:

CIA ACCOUNTABILITY ACT OF 1987

HOUSE LEGISLATION

H.R. Introduced November 3, 1987 by Representative Leon Panetta with 33 original cosponsors.

Official Title.—Clarify and restate the Comptroller General's authority to audit the financial transactions and evaluate the programs and activities of the CIA and for other purposes.

SECTION 2

Section two of the bill would add a new section (3523a) to title 31, United States Code, which clarifies GAO's authority to audit the financial transactions and to evaluate the programs and activities of the CIA. Subsection (a)(1) provides that GAO shall audit the financial transactions and evaluate the programs and activities of the CIA either on the initiative of the Comptroller General or when requested by the chairman or ranking minority member of the Select Committee on Intelligence of the Senate or the Permanent Select Committees on Intelligence of the House of Representatives.

The results of such audits may be disclosed only to the specified committees and the CIA Director. Since the method GAO uses to communicate the results of its audits varies, the section is drafted to restrict the dissemination of GAO's findings, whether through testimony, oral briefings, or written reports, to only the named committees and the CIA. The last sentence of subsection (b) makes clear, however, that neither the provisions of subsection 716(e), title 31, nor the on-site retention provisions of (d)(2) of this section, limit or restrict GAO's disclosure of source documents or information to the specified committees of the Congress.

Subsection (c) provides that notwithstanding any other provision of law GAO may inspect and copy any relevant books, records, documents, property or any other information, regardless of the medium used to record the information, necessary to the performance of the audit. GAO's access extends to any books, records, documents or property which belong to, or is in the possession of control of, the Agency regardless of who was the original owner of such information or property. The "(notwithstanding any other provision of law" clause is included to remove any potential restrictions on GAO access to CIA information that may be inferred from the various provision of the Central Intelligence Act of 1949.

Nevertheless, subsection (c) limits the Comptroller General's normal authority to interview officers and employees of an agency or department to obtain information necessary to the performance of the audit. Thus, where the President finds in writing that access to certain officers and employees, would not be in the national interest, the Comptroller General shall have no access to such officers or employees. The President's determination is, however, non-delegable, and he or she must provide the specified committees and the Comptroller

General with an explanation of the decision.

The Comptroller General may enforce the access rights provided under this subsection pursuant to the provisions of section 718(b)(d), title 31, United States Code.

Subsection (d) contains several safeguards to protect the confidentiality of Agency materials and information. Paragraph (1) directs the Comptroller General, after consulting with the specified committees of Congress, to establish procedures to protect classified and other sensitive information. Paragraph (2) requires the Comptroller General to retain on site his workpapers and records in suitable facilities provided by the Agency. The only exceptions are the rare occasions when Congress or its committees may need certain information from GAO's workpapers or where temporary removal off-site is needed, for example, for internal review processes.

The Committee, however, expects off-site removals to be limited in numbers and strictly controlled and accounted for under the procedures established by the Comptroller General pursuant to paragraph (1) directs the Comptroller General, after consulting with the specified committees of Congress, to establish procedures to protect classified and other sensitive information.

Paragraph (2) requires the Comptroller General to retain on site his workpapers and records in suitable facilities provided by the Agency. The only exceptions are the rare occasions when Congress or its committees may need certain information from GAO's workpapers or where temporary removal off-site is needed, for example, for internal review processes. The committee, however, expects off-site removals to be limited in numbers and strictly controlled and accounted for under the procedures established by the Comptroller General pursuant to paragraph (1) of this subsection. In this regard, GAO employees must maintain the same level of confidentiality for the records of any agency as the agency itself and are also subject to the same statutory penalties for unauthorized disclosure or use of an agency record as the agency's employees.

Paragraph (3) provides that GAO employees are subject to CIA security reviews and procedures. Such procedures should be similar to those applied by the CIA to employees of other establishments of the Government. The Director is urged to expedite GAO employees security clearances.

Paragraph (4) provides that the Comptroller General provide the CIA Director with the names of the GAO employees who have obtained a security clearance in carrying out this section.

Subsection (f) is a savings provision added to make clear that the authority contained in this section is in addition to other authority of the Comptroller General to audit and investigate. This subsection emphasizes that section 3523a is not to be construed to limit the authority of the Comptroller General to audit or investigate any other agency or department, including any agencies involved in foreign or domestic intelligence or counter-intelligence activities.

SECTION 3

Section 3 of the bill amends section 3524 of title 31, United States Code, to conform section 3524 to GAO's audit of the unvouchered accounts of the CIA under section 3523a. Thus, paragraph (1) adds an introductory clause to section 3524(a) to provide that audits of the financial transactions of the CIA, including those accounted for only on the certificate of the Director, CIA, such as expenditures made under the authority of section 8(b) of the Central Intelligence Agency Act of 1949, 50 U.S.C. 403(b), are subject to the provisions of section 3523a of title 31, United States Code.

Similarly paragraphs (2), (3) and (4) make conforming amendments to sections 3524(d)(2) and 3524(e) to reflect this change. Subsection (b) adds a similar conforming amendment to section 8(b) of the Central Intelligence Agency Act of 1949 to make absolutely clear GAO's authority to audit unvouchered accounts under new section 3523a. Subsection (c) conforms GAO's authority to enforce its access to CIA records to changes made by 31 U.S.C. 3523a and 3524.

H.R. -

A bill to clarify and restate the Comptroller General's authority to audit the financial transactions and evaluate the programs and activities of the Central Intelligence Agency, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "CIA Accountability Act of 1987".

Sec. 2. (a) Title 31, United States Code, is amended by inserting after section 3523 the following new section:

§ 3523a. Audit of Central Intelligence Agency Activities

"(a) Notwithstanding any other provision of law, the Comptroller General shall audit the financial transactions and shall evaluate the programs and activities of the Central Intelligence Agency—

"(1) on the initiative of the Comptroller General or

"(2) when requested by the chairman or the ranking minority member of the Select Committee on Intelligence of the Senate or the Permanent Select Committee on Intelligence of the House of Representatives.

"(b) Whenever the Comptroller General conducts an audit or evaluation pursuant to subsection (a), the Comptroller General shall provide the results of such audit or evaluation only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Director of Central Intelligence.

"(c) Notwithstanding any other provision of law, the Comptroller General may inspect and copy any relevant books, documents, papers, records, other information, including written or recorded information of all kinds, and property which belongs to, or is in the possession or control of, the Central Intelligence Agency in order to perform audits and evaluations pursuant to subsection (a). The Comptroller General shall also be provided access to the officers and employees of the Central Intelligence Agency at such reasonable times as the Comptroller General considers necessary to carry out such audits and evaluations. Notwithstanding the preceding sentence, the Comptroller General shall not be provided access to any officer or employee of the Central Intelligence Agency if the President determines that access to any such officer or employee is not in the national interest. The President shall prepare and transmit a report to the Comptroller General and the chairman and ranking minority member of each committee referred to in subsection (a)(2) of this section setting forth his determination. The President may not delegate the making of a determination under this subsection to any officer or employee of the executive branch.

"(d) (1) After consultation with the Select Committee on Intelligence of the Senate and with the Permanent Select Committee on Intelligence of the House of Representatives, the Comptroller General shall establish procedures to protect from unauthorized disclosure all classified and other sensitive information furnished to the Comptroller General or his representatives under this section.

"(2) All workpapers of the Comptroller General and all records and property of the Central Intelligence Agency that the Comptroller General uses during an audit or evaluation under this section shall remain in facilities provided by the Central Intelligence Agency. Procedures established by the Comptroller General pursuant to paragraph (1) of this subsection shall include provisions specifying the method and duration of any temporary removal of workpapers from facilities provided by the Central Intelligence Agency.

"(3) Before initiating an audit or evaluation under this section, the Comptroller General shall provide the Director of Central Intelligence with the names and other relevant information concerning each officer and employee of the General Accounting Office who may have access to, or otherwise be provided with, classified or other sensitive information in connection with an audit or evaluation for purposes of security clearance reviews. The Director of Central Intelligence shall complete the necessary security clearance reviews on an expedited basis.

"(4) The Comptroller General shall provide the Director of Central Intelligence with the name of each officer and employee of the General Accounting Office who has obtained a security clearance from the Central Intelligence Agency and to whom, upon proper identification, the officers, employees, records, and property of the Central Intelligence Agency shall be made available in carrying out this section.

"(e) This section may be superseded only by a law enacted after the date of enactment of this section specifically repealing or amending this section.

"(f) The authority provided in this section is in addition to the authority that the Comptroller General has to investigate, audit, and evaluate the financial transactions, programs, and activities of any other establishment or agency of the Government of the United States."

(b) The table of sections for chapter 35 of title 31, United States Code, is amended by inserting after the item relating to section 3523 the following new item:

"3522a. Audit of Central Intelligence Agency activities."

Sec. 3. (a) Section 3524 of title 31, United States Code, is amended—

(1) in the first sentence of subsection (a)(1), by striking out "The" and inserting in lieu thereof the following: "Except with respect to audits or evaluations of the Central Intelligence Agency as provided in section 3523 of this title, the";

(2) in subsection (c), by inserting "(other than activities conducted by the Central Intelligence Agency)" after "activities";

(3) by amending subsection (d) to read as follows: "(d) This section does not apply to expenditures under section 102, 103, 105(d)(1), (3), or (5), or 106(b)(2), or (3) of title 31, and

(4) in subsection (e), by striking out "or a financial transaction under section 8(b) of the Central Intelligence Act of 1949 (50 U.S.C. 403(b))".

(b) Section 8(b) of the Central Intelligence Act of 1949 is amended—

(1) by inserting "(other than section 3523a of title 31, United States Code)" after "Government funds"; and

(2) by adding at the end thereof the following new sentence: "The Comptroller General shall audit expenditures made for objects of a confidential, extraordinary, or emergency nature to be accounted for solely on the certificate of the Director."

(c) Section 718(d)(1)(A), title 31, United States Code, is amended by inserting "(other than activities conducted by the Central Intelligence Agency)" after "activities" the first place it appears.